

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-12-2006

CORAM:

THE HONOURABLE MR.JUSTICE R.REGUPATHI

Crl.O.P.No.9166 of 2003

Rahiman @ Pyari

.. Petitioner.

Versus

1.Kumari

2.Minor R.Babu .. Respondents.
rep. by mother and natural guardian Kumari

Prayer: Petition filed under Section 482 Cr.P.C, seeking to set aside the order passed in M.C.No.13 of 1996 dated 03.05.2001 on the file of the Judicial Magistrate, Arcot and confirming the order passed in Criminal Revision Petition No.32 of 2001 dated 27.01.2003 on the file of the Principal District Sessions Judge, Vellore.

For Petitioner : Mr.R.Margabandhu

For Respondents : Ms. Jayasri Baskar

O R D E R

On conclusion of the proceedings in M.C.No.13 of 1996, on the file of the learned Judicial Magistrate, Arcot, the respondent/wife and minor son of the petitioner were awarded maintenance of Rs.300/- and Rs.200/- respectively. In a revision preferred in Crl.R.P.No.32 of 2001 before the Principal District and Sessions Judge, Vellore, the order of the trial Court has been confirmed. Aggrieved against that the present original petition, invoking the inherent powers of this Hon'ble Court has been filed.

2. The contention of the first respondent is that the petitioner married the first respondent on 23.01.1994 in a temple in the presence of P.W.2 and P.W.3. They were living as husband and wife. Thereafter, the petitioner demanded a sum of Rs.25,000/- as dowry and started ill-treating. In the meantime on 01.09.1995 the first respondent has given birth to the second respondent. The petitioner refused to visit the first respondent and on enquiry the first respondent found that the petitioner has performed a second marriage on 22.08.1994. It is further submitted that the petitioner is working as a driver in State Transport Corporation and earning a sufficient salary. As the first respondent could not maintain the family, filed a maintenance petition before the learned Magistrate. Exparte order awarding maintenance has been passed. But in the revision filed by the petitioner it was set aside and the proceedings was taken up again. Five years lapsed in the meantime. On a

full-fledged trial, the learned Magistrate has awarded the maintenance above mentioned.

3. Learned counsel appearing for the petitioner submits that the petitioner is a Muslim and the first respondent is a Hindu. In such circumstances, without conversion, the marriage alleged to have taken place and such marriage is not a valid marriage. In such circumstances, the first respondent cannot claim herself as a wife and maintenance under Section 125 Cr.P.C cannot be awarded. The paternity of the second respondent is also disputed and further it is stated that the petitioner has married one Mumtaz and to substantiate that photographs and negatives have been furnished before the Court.

4. Learned counsel for the petitioner relied on a judgment reported in 1997 MLJ CrL 740 (K.Kasthur V. C.Alavutheen Ravuthar) and particularly relied on the following passage:

"9..... The following four ingredients have to be established by the wife, in order to enable the Court to invoke this Section, for passing the award of maintenance;

(1) The wife must be a legally wedded wife

(2) the wife must be unable to maintain herself

(3) The husband must have sufficient means

(4) The wife must have been neglected or refused to be maintained by the husband.

Only if all these ingredients are established, the Court could pass an order of maintenance. If anyone of the ingredients is absent, then it would not be possible for the Court to invoke this Section.

10. In the instant case, in my view, the first ingredient is explicitly absent. Even according to the petitioner, in the petition filed in M.C.No.96 of 1994 on 16.09.1994, she averred, as stated earlier, that she lived with the respondent as his third wife for two years, while the marriage between herself and the said Sethu was subsisting and the order of the Magistrate, awarding maintenance to her against the said Sethu was in force.

11. Further more, admittedly she is a Hindu and the respondent is a Muslim. Though in her evidence, she stated that the respondent married the petitioner by tying the black-bead (கருகமணி) around her neck. She herself would admit that the respondent knew about her past life and the subsistence of her marriage with the said Sethu. She would further admit that she insisted on several occasions for the registration of the marriage in accordance with law, but the respondent Alavutheen Ravuthar did not incline to register the same, and thereby she was cheated. The tying of black-bead cannot be construed to be a valid marriage in the eye of law either under the Hindu Marriage Act or under Muslim Marriage Act or under the Special Marriage Act especially these parties to the marriage belong to different religions."

5. At the time when this petition was taken up for hearing, the respondent was not represented through counsel. Therefore, assistance of a counsel from the Legal Services Authority has been sought for and accordingly, Mr.M.N.Balakrishnan has been nominated.

6. The learned counsel for the respondents submit that Ex.P-1 a receipt issued by the temple authorities have been filed to substantiate the performance of marriage between the petitioner and the first respondent. P.W.2 and P.W.3 also corroborated this fact. To substantiate the birth of the second respondent for the petitioner and the first respondent the birth certificate Ex.P-2 has been marked, wherein it has been specifically mentioned that the petitioner is the father of the child. Though opportunities were given to the petitioner, the petitioner could not produce contrary materials to substantiate the claim. It is further submitted that aggrieved against the original order passed by the learned Magistrate, a revision petition has been filed before the Court of Sessions and it was dismissed. The present petition will amount to second revision petition and such petition is prohibited under law and inherent powers of this Hon'ble Court cannot be exercised.

7. Learned counsel for the petitioner relied on a judgment reported in 1999 SCC (Cri) 1118 (Rajathi Vs. C.Ganesan), wherein it has been held as follows:

"9.We are not going into the question if the High Court on examining the case on merit was correct in coming to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal, we are only concerned to see if the High court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right.

10. In Krishnan V. Krishnaveni this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, whether inherent power of the High Court is still available under Section 482 of the Code. This Court said as under: (SCC p.248 para 10).

"10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person-accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High court to have it corrected at the inception lest grave miscarriage of justice

would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

8. I have perused the materials available on record and heard the submissions made. In a case reported in 1999 SCC (Cri) 1345 Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and another, it has been held as follows:

"6. Learned counsel for the appellant at the time of hearing had not disputed the paternity of the child. Hence, the question is whether the marriage between the appellant and Respondent 1 was valid or invalid? In our view, validity of the marriage for the purpose of summary proceedings under Section 125 Cr.P.C is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses and in such a situation, the party who denies the marital status can rebut the presumption.....

10. After not disputing the paternity of the child and after accepting the fact that the marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the appellant to contend in a proceeding under Section 125 Cr.P.C that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 is not to be utilised for defeating the rights conferred by the legislature on the destitute women children or parents who are victims of the social environment.....

13. Hence, in our view from the evidence which is led if the magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Cr.P.C which are of a summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125 Cr.P.C can approach the civil court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties."

Dwarika Prasad Satpathy case was relied on in a case reported in 2005 (7) SCC CrI. 787 Savitaben Somabhai Bhatiya Vs. State of Gujarat and others

9. Though the petitioner has disputed the validity of the marriage and the paternity of the child, sufficient materials namely Ex.P-1-Marriage Certificate and Ex.P-2-Birth Certificate along with the corroborative oral evidence of P.W.2 and P.W.3 have been produced before the learned Magistrate and such evidence are unassailable. The learned Magistrate has given valid reasons to come to a conclusion while awarding maintenance.

10. The maintenance petition has been filed during 1996 and the learned Magistrate has passed an order on 30.05.2005. The whole of the delay of the proceedings obviously has been caused by the petitioner. The revision confirming the order passed by the learned Magistrate was passed on 29.01.2003. In spite of such orders the petitioner has not deposited any money before the learned Magistrate and it has been confirmed from the counsel appearing for the petitioner. The present second revision has been filed during 2003. Though the wife and minor child have initiated proceedings during 1996 they have not been paid a single pie by the petitioner and was successfully protracting the proceedings.

11. On a perusal of the materials, I find that there are valid materials to substantiate the marriage as well as the paternity of the child. In such circumstances, I do not find any merit in the petition to set aside the orders passed by both the Courts. Obviously, this present petition itself is not maintainable and it has been filed by way of second revision under Section 482 Cr.P.C. The performance of the marriage, the petitioner lived together with the 1st respondent as husband and wife, that the birth of the second respondent to the petitioner, has been proved beyond reasonable doubt. In such circumstances, I do not find any merit in the petition filed and therefore, it is dismissed.

12. In such circumstances, the learned Judicial Magistrate, Arcot is directed to proceed with the petitioner for recovery of the arrears of maintenance. The claim of the maintenance has been made during 1996. The amount awarded appears to be a paltry sum and if a request by the respondents are made for enhancement of maintenance, the same also could be taken into consideration in accordance with law.

csh

Sd/
Asst. Registrar

/true copy/

To

1. The Judicial Magistrate, Arcot
 2. -do - thro' the Chief Judicial magistrate, Vellore.
 3. The Principal District Sessions Judge, Vellore.
- 1 CC TO M/S Jaya Sri Baskar, Advocate sr 62208
- 1 CC TP MR.R. Margabandhu, Advocate sr 62368

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ava (co)

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